IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) Nos.251 and 252 of 2007

M/s.Cairn Energy (India) Limited
Wellington Plaza, 2nd Floor
Anna Salai, Chennai-600 002. .. Appellant in both Tax Cases

versus

The Joint Commissioner of Income-tax
Special Range I
121, Nungambakkam High Road
Chennai-600 034. .. Respondent in both Tax Cases

PRAYER: T.C.No.251 of 2007 is filed under Section 260A of the Income Tax Act, 1961, against the order dated 28.7.2006 in ITA No.273/MDS/2001 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'A' and T.C.No.252 of 2007 is filed under Section 260A of the Income Tax Act, 1961, against the order dated 28.7.2006 in ITA No.1567/MDS/2000 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'A'.

For appellant : Mr.V.Ramachandran
Senior Advocate
for Dr.Anita Sumanth

For respondent : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

These two Tax Cases are filed by the assessee, seeking admission. The appeals relate to the assessment years 1996-97 and 1998-99.

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2. The following are the substantial questions of law raised seeking admission in respect of T.C.No.251 of 2007:

(i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the disallowance of Rs.88,05,226/- relating to the exploration expenses in respect of the following:

(a) Cambay offshore exploration permit	:	Rs.69,94,968/-
(b) Krishna Godavari Offshore exploration permit	:	Rs.12,29,632/-
(c) India General Evaluation	:	Rs. 5,80,626/-
		Rs.88,05,226/-

(ii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the disallowance of pre-effective cost of Rs.2,72,93,866/-?

(iii) Whether, on the facts and in the circumstances of the case, even assuming without conceding that the expenditure is not allowable as a deduction in computing the income for the previous year, the Tribunal ought not to have directed the grant of allowance of the aforesaid expenditure on the principle of amortization?

3. The substantial questions of law in respect of T.C.No.252 of 2007 are as follows:

(i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in disposing of the appeal without considering the contention with regard to the validity of the order made under Section 143(1)(a)?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in not holding that the order made under Section 143(1)(a) adding to the income declared in the return, the claim on account of Site Restoration Cost is not valid in law?

(iii) Whether on the facts and in the circumstances of the case the Tribunal is right in law in not holding that in so far as the income has been declared in terms of Section 115JA, the claim on account of site restoration cannot be added back to the income declared?

(iv) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the claim on account of Site Restoration Cost is not allowable as a deduction in computing the income?

4. The assessee is a foreign company engaged in the business of prospecting the production of mineral oil in India. The assessee appellant carried on the exploration and production activities under a multi-partite agreement between the assessee company, other joint venture partners and the Government of India under Production Sharing Contracts in various contract areas. In respect of the assessment year 1996-97, the assessee filed a loss return. The assessment was completed under Section 143(3),

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assessing the loss at Rs.40,21,92,229/-. It is stated that during the assessment year under consideration, the assessee was engaged in exploration and production activities in the contracted area identified as "Ravva Oil and Gas Field". The Assessing Officer disallowed claim of expenditure claimed to a sum of Rs.88,05,226/- relating to the exploration cost of three projects, namely, Cambay Offshore Exploration Permit, Krishna Godavari Offshore Exploration Permit and India General Evaluation. The Assessing Authority disallowed the said claim on the ground that a sum of Rs.81,86,965/- related to the earlier assessment year as per the Tax Audit Report filed. Further, the expenses were not incurred in relation to the Ravva Oil Field and they were totally unconnected to the said project; that they related to two other projects for which permits had been obtained and Production Sharing Contract was yet to be entered into. As regards India General Evaluation, he held that the company was exploring the possible areas where oil exploration was feasible. Accordingly, the Assessing Officer made the addition and noted the assessee's plea that these expenses would be considered at a later date when the exploration in Cambay Offshore Exploration Permit and Krishna Godavari Offshore Exploration Permit materialised. The Assessing Authority further disallowed the claim of Rs.2,73,93,866/- as relatable to pre-incorporation expenses. The Assessing Authority took the view that no deduction had been provided for either in Section 35-B or in any other provisions of the Act on the claim of pre-effective cost.

5. The assessee challenged this finding before the Commissioner of Income Tax (Appeals), who, however, rejected the same and confirmed the findings of the Assessing Officer. Aggrieved by this, the assessee preferred further appeal before the Tribunal.

6. After hearing both sides, on perusing the records produced by the assessee, the Tribunal came to the conclusion that the finding of the authorities below that the expenditure in question related to earlier years could not be assailed by the assessee. The Tribunal confirmed the view that the audit report showed that the expenditure related to the prior period. Thus, the expenditure incurred in respect of Ravva Oil Fields was rejected as totally unsupported by any material to connect it as relevant to and related to the year under consideration. On the question of pre-effective cost, the assessee contended that the same were allowable as per the provisions of Section 35-D over a period of ten years, subject to certain limits and restrictions. The Tribunal found that the expenses to the extent of Rs.2,72,93,866/- were incurred by the holding company relating to the formalities of the company. The Tribunal noted that the Commissioner as well as the Assessing Officer found that the expenses were admittedly incurred by the holding company. The Commissioner observed that there was no denial of the fact that these expenses were incurred relating to the formalities of the company and that even before the Tribunal, the assessee could not give any evidence that it had incurred expenses as post-incorporation expenditure. In the light of this, the Tribunal

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rejected the plea, confirmed the orders of the authorities below and thus, dismissed the appeal.

7. The Revenue also preferred an appeal before the Tribunal in respect of the Assessment Year 1998-99 with reference to the provision for Site Restoration Cost. The Revenue disputed the claim under Section 42 that unless the agreement provided for Site Restoration Fund, it being only a provision, the same was not allowable either under Section 37 or under Section 42. The Revenue placed reliance on the decisions reported in 271 ITR 322 (GEM GRANITES Vs. C.I.T.) and 262 ITR 417 (C.I.T. Vs. POOSHYA EXPORTS P. LTD.). The Tribunal, following the said decisions held that the agreement is silent as regards the claim allowable under Section 42. Consequently, it held that the assessee was not entitled to the Site Restoration Cost. Thus the Tribunal allowed the Revenue's appeal.

8. Aggrieved of the view taken by the Tribunal in allowing the appeal by the Revenue, the assessee has preferred appeals against the orders passed in its appeal as well as the one which went in favour of the Revenue.

9. Learned senior counsel appearing for the assessee submitted that the Tribunal ought to have seen that the expenditure relating to the exploration ought to have been adjudged business-wise with each operation constituting a single integrated business. Consequently, the Tribunal erred in disallowing the claim relating to the exploration expenses that it related to the earlier years. Learned senior counsel also questioned the view of the Tribunal on the claim of the expenditure post-incorporation. He pointed out that the expenditure were incurred by the holding company only on account of the appellant company and that the claim had been made on the appellant company only during the relevant previous year. In the circumstances, the learned senior counsel sought for an admission on the said question.

10. As regards T.C.No.252 of 2007, learned senior counsel submitted that the Tribunal failed to see that the Commissioner of Income Tax (Appeals) allowed the appeal only on the ground that the issue relating to the Site Restoration Expenditure was a debatable issue and hence, could not be considered in an intimation under Section 143(1)(a) and that the Tribunal erred in not dealing with this issue covered under the said order. He also questioned the correctness of the Tribunal placing reliance on the decisions reported in 271 ITR 322 (GEM GRANITES Vs. C.I.T.) and 262 ITR 417 (C.I.T. Vs. POOSHYA EXPORTS P. LTD.). Hence, he prayed for admission of the case relating to the Assessment Year 1998-99.

11. A perusal of the order of the authorities below show that the applicant is a 100% subsidiary of an Australian Company. In respect of the expenditure of Rs.88,05,226/- relating to the exploration expenses, it was noted that the Tax Audit Report under Section 44-AB showed that an expenditure of Rs.81,86,965/- related

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to the earlier Assessment Year. It was further pointed out that apart from this, the expenses had not been incurred by Ravva Oil Fields, which started commercial production only during the year under consideration and that they also related to two other projects for which the Production Sharing Contract was yet to be entered into. Considering the fact that as regards India General Evaluation, the company was exploring the country regarding the possible area for further exploration of oil, the Assessing Authority disallowed the same. While considering the same, the Assessing Authority pointed out that the assessee admittedly stated that this expenditure related to earlier years and hence, considering the facts therein, the claim was rejected by the appellate authority also. Thus, the Commissioner of Income Tax (Appeals) concurred with the reasons given by the Assessing Officer.

12. In the appeal preferred, the Tribunal, the second appellate authority, referring to the audit report, confirmed the findings of the Assessing Officer as well as the Commissioner of Income Tax (Appeals). Being pure questions of fact, we do not find any merit to accept the plea raised herein by the learned senior counsel that the Tax Case raises questions of law for admission.

13. We do not find any ground to accept the plea that the expenses should be considered business-wise. On the second question with reference to the disallowance of the pre-effective cost of Rs.2,72,93,866/-, the Assessing Authority found that these expenses represent the preliminary expenses incurred by the holding company relating to the formation of the assessee company. Considering the nature of expenditure, the Assessing Authority rejected the plea for deduction under Section 35-D. In the course of its order, the appellate authority found that there was no ground to differ from the finding of the Assessing Officer; that considering the fact that these expenses were incurred by the holding company relating to the formation of the company and in the absence of any material to accept the contention that they related to post-incorporation, the findings of the Tribunal are pure questions of fact and we do not find any merit to call for any admission as giving raise to a question of law.

14. In the appeal preferred before the Tribunal, it noted that the findings by the Commissioner of Income Tax (Appeals) were not refuted and assailed by the assessee without any clinching evidence. In these circumstances, the claim that the expenses related to post-incorporation was rejected. Thus, the Tribunal confirmed the findings of the authorities below.

15. Learned senior counsel appearing for the assessee/appellant could not get over this finding of fact by the Tribunal. In the circumstances, we do not find any ground to interfere with the order of the Tribunal. In the light of the view that we have taken confirming the findings, we reject all the grounds as pure questions of fact. Consequently, T.C.No.251 of 2007 stands rejected.

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16. As regards T.C.No.252 of 2007, learned senior counsel appearing for the assessee submitted that the Tribunal had disposed of the appeal without considering the contention as regards the validity of the order passed under Section 143(1)(a). A perusal of the orders of the authorities below show that, in his order under Section 143(1)(a), the assessing authority made adjustment in respect of Site Restoration Cost provision and that the examination of the nature of accounts maintained was clearly necessary before resorting to the prima facie adjustment. The Commissioner of Income Tax (Appeals), accordingly, agreed with the submission of the assessee that no prima facie adjustment should have been made in the proceedings under Section 143(1)(a); thus, he allowed the appeal. On a further appeal by the Revenue, the Tribunal considered the question on merits and thus allowed the appeal. Considering the question of law raised as regards the correctness of the order of the Tribunal in disposing of the appeal without considering the contention relating to the validity of the order passed under Section 143(1)(a), we directed the standing counsel to take notice. Accordingly, after hearing both sides, we feel that the order of the Tribunal deserves to be set aside and the order remanded back to the Tribunal to go into the question of jurisdiction to make adjustments in an intimation under Section 143(1)(a) and pass orders in accordance with law.

In the light of the above, while we dismiss T.C.No.251 of 2007 on the ground that there is no substantial question of law for interference, the questions being pure questions of fact, we allow T.C.No.252 of 2007, setting aside the order of the Tribunal and remanding the matter back to the Tribunal to consider the question of jurisdiction under Section 143(1)(a) with reference to the claim made by the assessee and considered by the authorities. Connected M.P.No.1 of 2007 stands closed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

The Joint Commissioner of Income-tax
Special Range I
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Chennai-600 034.

+ 1 cc M/s. Dr. Anita Sumanth, Advocate SR No.16056
+ 2 ccs to M/s. Pushya Sitaraman, Senior St Counsel for I.T.
Advocate SR No. 15769, 15770

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